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CITY OF BEVERLY HILLS

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Attorneys for Petitioner
CITY OF BEVERLY HILLS

BEFORE THE
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of

CITY OF BEVERLY HILLS,
FOR REVIEW OF CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, LOS ANGELES,
REGION, ORDER PURSUANT TO
WATER CODE SECTION 13383

**PETITION FOR REVIEW BY CITY
OF BEVERLY HILLS**

[Water Code § 13320(a) and
23 CAL. CODE REGS. § 2050]

[Requested to be Held in Abeyance
23 CAL. CODE REGS. § 2050.5]

Petitioner City of Beverly Hills (“Petitioner”) respectfully petitions the State Water Resources Control Board (“State Board”) to review the Order issued by the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) on March 4, 2008, and the related Notice of Violation (“NOV”) issued the same day, attached hereto as Exhibits A and B, respectively.

A. SUMMARY OF PETITION

On March 4, 2008, the Executive Officer of the Regional Board issued a Notice of Violation (“NOV”) and separate Order pursuant to Water Code Section 13383 to the Petitioner. The NOV alleged violations of the municipal separate stormwater system permit (“MS4 Permit”) issued to the Petitioners based on alleged exceedances of bacteria water quality objectives at a single monitoring point along a Santa Monica Bay Beach (“SMB-BC01”) also described as “Ballona Creek.” The Order demanded, by April 21, 2008, the provision of detailed information concerning the alleged exceedances, including (a) an evaluation of dry weather discharges from Petitioner municipal stormwater system “at each noncompliant shoreline and harbor location on the date(s) of the violations;” (b) a detailed description of remedial actions taken both before and after incorporation of bacteria TMDL provisions into the MS4 Permit; (c) a detailed description of “additional corrective and preventative actions” to be taken “to preclude future violations” plus a time schedule “designed to achieve full compliance;” (d) an evaluation of potential sources for the exceedances within the Ballona Creek watershed; and (e) evidence supporting contentions made by Petitioner that it is not responsible for the alleged violations.

The Executive Officer's action in issuing the Order and NOV was improper because the Order and/or NOV: (1) improperly seeks information based on alleged violations of receiving water limitations that, with respect to stormwater and urban runoff discharges, were improperly established in the Regional Water Quality Control Plan (“Basin Plan”) for the Los Angeles Region and incorporated into the MS4 Permit; (2) violate the MS4 Permit’s procedures for responding to alleged exceedances of bacteria water quality standards; (3) seek information regarding alleged violation of receiving water limitations established by a TMDL other than the Ballona Creek Bacteria Dry Weather Total Maximum Daily Loads (“TMDL”) a TMDL that was not incorporated into the MS4 Permit; (4) improperly subjects the Petitioner to two different bacteria TMDLs,

one for the Santa Monica Bay Beaches Bacteria TMDL (“SMB Beaches TMDL”), and the other for the actual watershed into which Petitioner’s MS-4 system discharges, the Ballona Creek Bacteria TMDL (“BCB TMDL”). The BCB TMDL has significantly different timetables, allows for a different implementation period, and contains numerous other provisions different and distinct from the SMBD TMDL which is the basis for the Order issued to Petitioners; (5) improperly seeks to use Water Code § 13383 as authority to seek such information; (6) to the extent that the Executive Officer was authorized under Water Code § 13383 to obtain “other information”, seeks information that was not “reasonably required” pursuant to that statute; (7) seeks information regarding the quality of waters not impacted by MS4 discharges and not in the MS4 system; (8) seeks information requiring extensive monitoring and investigation, in contravention of the monitoring program established under the MS4 Permit and amending such program without a hearing, in violation of the Porter-Cologne Act; (9) seeks information regarding alleged exceedances of water quality standards and objectives as to which the individual Petitioner has no responsibility; (10) is founded upon improper calculation of a 30-day rolling average for the data points that were cited in the Order and is otherwise technically deficient in interpreting the sampling results from that single sampling location; (11) improperly seeks to impose an unfunded state mandate under the guise of “seeking” information purportedly pursuant to § 13383; (12) is based upon a data collection and assessment scheme for the SMB Beaches TMDL that was subject to reconsideration in July 2007; and (13) purports to impose joint responsibility upon Petitioner and other co-permittees in violation of law. The purposes of that reconsideration was to “re-evaluate the reference system selected to set allowable exceedance levels” and consider a wide variety of other potential adjustments. The Regional Board has not performed this reconsideration and therefore, is utilizing an admittedly imprecise and outdated regulatory framework even as to the SMB Beaches TMDL.

For the reasons set forth below, this Board should set aside the NOV and accompanying Order.

B. PETITION FOR REVIEW

1. Name, Address, Telephone Number and E-mail Address of Petitioner:

City of Beverly Hills
Roderick J. Wood
City Manager
455 North Rexford Drive
Beverly Hills, California 90210
Telephone: (310) 285-1055
E-mail: Rwood@beverlyhills.org

With a copy to:

RICHARDS, WATSON & GERSHON
Laurence S. Wiener
Lisa A. Bond
Norman A. Dupont
Matthew E. Cohen
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
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E-mail: MCohen@rwglaw.com

2. Regional Board Executive Officer Action State Board Is Requested To

Review/Copy of Order: Petitioners request that the State Board review the NOV and Order, attached as Exhibit A, and the accompanying NOV, attached as Exhibit B, in its entirety, including the entire “Requirement to Provide Information” section of the Orders and the following requirements:

(1) The requirement to provide a “report” for an unspecified “shoreline monitoring site, for which it is jointly responsible, where violations have been documented.”

(2) The requirement that the report provides: “For site SMB BC-01, which is impacted by discharges from Ballona Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Ballona Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Ballona Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations at this site are originating from sources in proximity to the shoreline monitoring location, then the City of Beverly Hills shall provide the information required below.”

(3) The requirement that the report provides:

- a. “Details regarding dry weather discharge from the MS4 to the noncompliant shoreline location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
- b. Details regarding existing treatment of summer dry weather discharge from the MS4 at the noncompliant shoreline location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
- c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.”

(4) The requirement that the report provides: “A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements [for watersheds other than Ballona Creek] into the LA MS4 Permit (i.e.,

before September 14, 2006) and those remedial actions taken since, and the results thereof.”

(5) The requirement that the report provides: “A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.”

(6) The requirement that states: “In addition, should the City of Beverly Hills contend that it is not responsible for one or more of the violations, Beverly Hills shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline or harbor monitoring site is not the result of a discharge from the MS4 but from some other source or discharges;
2. Evidence that Beverly Hills does not discharge dry weather flow into the Santa Monica Bay or Marina del Rey Harbor at the shoreline or harbor monitoring site, respectively; and
3. Evidence that Beverly Hills’ summer dry weather discharges into the Santa Monica Bay are treated to a level that does not exceed either the single sample or geometric mean bacteria RWLs.”

3. **Date on Which Regional Board Executive Officer Acted:** March 4, 2008.

Petitioners seek this review because:

(1) The Order seeks information regarding alleged violations of receiving water limitations incorporated into the MS4 Permit on August 9, 2007. The receiving water limitations provides: “During Summer Dry Weather there shall be no discharges of bacteria from MS4s into Marina del Rey Harbor Basins D, E, or F, including Mothers’

Beach that cause or contribute to exceedances of the applicable bacteria objectives” (MS4 Permit, p. 24). The receiving water limitations were incorporated to reflect the Santa Monica Bay Beaches Bacteria Dry Weather TMDL and the Marina del Rey Harbor, Mothers’ Beach and Back Basins Bacteria TMDL, respectively.

The water quality objectives that are the subject of these receiving water limitations were adopted by the Regional Board and placed in the Basin Plan for the Los Angeles Region without consideration of the application to stormwater or urban runoff of the factors set forth in Water Code § 13241 or Water Code § 13000. As such, the bacteria objectives cannot be lawfully applied to stormwater discharges or urban runoff, and therefore cannot be a basis either for the violations alleged in the NOV’s or for the Order.

(2) The Regional Board has committed itself to a procedure to be followed if bacteria exceedances for the SMB Beaches TMDL were recorded. That procedure is set forth in Finding E.37 of the MS4 Permit, and applies to the Permit amendments to reflect the Santa Monica Bay Beaches Bacteria Dry Weather TMDL and the Marina del Rey Harbor bacteria TMDL. That procedure requires the Regional Board to first issue an investigative order “pursuant to Cal. Water Code § 13267 or § 13225” to determine the source of the exceedance. Only after the Regional Board had determined that one or more permittees had caused or contributed to violations of receiving water limitations would “the Regional Board . . . consider appropriate enforcement action, including a cease and desist order with or without a time schedule for compliance, or other appropriate enforcement action depending upon the circumstances and the extent to which the Permittee(s) has endeavored to comply with these provisions.” MS4 Permit, Finding E.37. This process, which emphasized first determining whether there was liability by the MS4 permittees for exceedances of the bacteria objectives, was completely ignored by the Executive Officer in issuing the Orders under Water Code § 13383 and in issuing the accompanying NOV’s.

(3) The Order seeks information regarding alleged exceedances of receiving water limitations established by the incorporation of the Santa Monica Bay Beaches Bacteria Dry Weather TMDL on September 14, 2006. As set forth in the Petition filed by the County of Los Angeles and the Los Angeles County Flood Control District with the State Board on or about October 16, 2006, such incorporation was unlawful and, thus, cannot form the basis for the NOV's alleged exceedances of the MS4 Permit's receiving water limitations at Santa Monica Bay Beaches monitoring locations or for the Order request for information relating these alleged exceedances.

(4) The City of Beverly Hills is subject to a separate and independent TMDL, the Ballona Creek TMDL adopted by Board Resolution No. 2006-11. This TMDL is not incorporated by reference or otherwise into the NPDES permit No. CAS 004001. Therefore, the application of other TMDL limits which have different compliance standards and implementation timetables, to the Petitioner is a violation of law, and conflicts with the Board's own Resolution No. 2006-11 adopting separate TMDL limits for the Ballona Creek watershed. Resolution No. 2006-11 specifically references "The lengthy implementation period allowed by the [Ballona Creek Bacteria] TMDL . . .", a period far different than time periods for the Santa Monica Bay Beaches TMDL. The BCB TMDL also expressly provides an opportunity for Petitioner and other co-permittees to demonstrate the impact of natural sources upon bacteria levels in the Ballona Creek Estuary, specifically noting in the staff background document: "Del Rey Lagoon and the Ballona Wetlands are nonpoint sources to Ballona Estuary that likely receive the bulk of their bacteria loading *from natural sources. This makes them potential candidate waterbodies for the natural sources exclusion.* Therefore, this [BCB] TMDL requires responsible agencies for each waterbody to conduct a natural sources study in order to determine its eligibility for such exclusion." *LA County Regional Board Report, Total maximum Daily Loads for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, & Sepulveda Channel* at 29 (April 4, 2006) (incorporated by

express reference in Board Resolution No. 2006-11). The Board's attempt to apply a different set of TMDLs for the SMB Beaches watershed improperly deprives Petitioner of the rights to demonstrate the impact of natural sources upon its watershed, the Ballona Creek Watershed.

(5) The Executive Officer has improperly employed Water Code § 13383 as authority for the Order. Section 13383 was intended by the Legislature to ensure that state law was consistent with the monitoring and reporting requirements of the Clean Water Act. It was not intended to provide regional boards with an investigative power that is greater than that found in the federal Act. Water Code § 13383 is clearly designed to provide a mechanism whereby the Regional Board can obtain "monitoring, inspection or entry" information regarding a permittee's discharges. The purpose of such reports is to enable the Regional Board to make a reasonable characterization of that discharge. The Order, however, is not being utilized for that limited purpose.

Instead of asking for additional "monitoring" of a permittee's discharges from the MS4 (the only appropriate subject for inquiry), the Order requires the generation of information not within petitioner's possession or control. The Order requires an "evaluation" of "sources," including those "within proximity" of the "shoreline". Thus, the Orders purport to require Petitioners to examine other sources and discharges in order to prove that their own discharges could not have caused an exceedance in the shoreline monitoring. This type of "evaluation" goes far beyond monitoring at the point of discharge and exceeds the Executive Officer's authority under § 13383.

(6) Water Code § 13383 states that a regional board may require a discharger "to provide other information as may be reasonably required." The Orders seek a wide variety of information, including with respect to items far beyond the scope of an appropriate request for information, including information on "corrective and preventative actions," provision of a "time schedule," "evaluation" of the sources of

alleged exceedances, and the provision of exculpatory evidence and other information, as described in Section 2 above. Such information is not “reasonably required” of Petitioners.

(7) The Order improperly seeks information on waters not impacted by discharges from the Petitioner’s MS4 system, the only discharges for which Petitioners have responsibility under the MS4 Permit. For example, the Orders seek information on exceedances at harbor and shoreline locations are not near proximity to any MS4 discharge point within the City of Beverly Hills. This stems from the fact that the monitoring locations that recorded alleged exceedances of the bacteria standard, a location apparently at the mouth of Ballona Estuary at its confluence with the Pacific Ocean is approximately 9 miles from the City of Beverly Hills. The Order further seeks detailed information on discharges from “sources in proximity to the shoreline monitoring location,” but does not specify that such sources be part of the MS4. The Order further seeks information on upstream sources in Ballona Creek and tributaries, even though such waterways are not part of the MS4. Petitioners are not required to monitor locations not influenced by the MS4, as they have no legal responsibility, under the MS4 Permit, for discharges not associated with the MS4.

(8) The MS4 Permit, which is alleged in the NOV and in the Order to have been violated by Petitioner, contains a detailed monitoring program. By requiring Petitioner to submit detailed reports not required in the monitoring program under the MS4 Permit, including the provision of exculpatory evidence and the investigation of non-MS4 discharges, the Order modifies and amends the monitoring program set forth in the MS4 Permit without notice or hearing, in violation of the Porter-Cologne Water Quality Act.

The MS4 Permit is both a NPDES permit and waste discharge requirement (“WDR”) issued by the Regional Board under the Porter-Cologne Act (see Water Code §§ 13370-13389). A WDR cannot be issued except through prior notice and hearing.

Water Code § 13378. The Act further provides that only a *Regional Board* can modify a WDR, and that this function *cannot* be delegated to the executive officer. Water Code § 13223(a) (“Each regional board may delegate any of its powers and duties vested in it by [the Porter-Cologne Act] excepting only the following: . . . (2) the issuance, *modification*, or revocation of any water quality control plan, water quality objectives, or *waste discharge requirement*.”) (emphasis supplied).

(9) The Order requires individual recipients to investigate discharges of unspecified and completely unidentified third persons or “sources in proximity to the shoreline monitoring location” assessment of waters not associated with MS4 discharges, waters that may have been impacted by bacteria sources including septic systems, watercraft, bathers or wildlife.

(10) The Order is founded upon an improper calculation by Board technical staff of the 30-day geometric average for the data points that were cited in the Order. A complete description of this technical miscalculation and other miscalculations is contained in Exhibit “D” hereto, the Technical Memorandum in support of this Petition. To the extent that improper calculation of a “daily” load based upon weekly sampling was done, then the Board’s order is invalid under the Clean Water Act, which clearly and unambiguously requires regulations based upon “total maximum *daily* loads.” *Friends of the Earth, Inc. v. EPA*, 446 F.3d 140, 144 (D.C. Cir. 2006) (“The law says ‘daily.’ We see nothing ambiguous about this command. ‘Daily’ connotes ‘every day.’”)

(11) The Order improperly seeks to impose an unfunded state mandate to investigate third-party sources of pollution in watersheds that Petitioner’s MS-4 system does not utilize (the Santa Monica Bay and Malibu Creek watersheds) and make determinations as to “sources” of contamination now found at a point located in the Pacific Ocean. Such an “information request” is not justified under §13383 as noted above, and therefore, can only constitute an unfunded state mandate requiring Petitioner to carry out work expressly relegated by law to the Regional Water Boards themselves.

(12) The Order is based upon data collection, assessment, and exceedence criteria that were required to be revisited by the Regional Board in July 2007, four years after formal implementation of the SMB Beaches TMDL. The Board has failed to conduct this reconsideration, and is therefore relying upon admittedly outmoded and inaccurate data and exceedence day criteria.

(13) The Orders are based on the allegation that Petitioner is jointly responsible for the alleged exceedances. To the contrary, Petitioner is not responsible for the discharges of others and Section 13383 does not give the Executive Officer authority to requires Petitioner to provide information about the discharge of others.

See further the Statement of Points and Authorities attached as Exhibit C and incorporated herein.

4. **How Petitioner is Aggrieved:** The Order purports to make Petitioner responsible for assembling detailed information with respect to alleged exceedances of bacteria water quality standards by a potentially vast number of diverse sources located miles away from Petitioner's MS4 system and jurisdictional boundary. The effort required to assemble this information, to the extent it is even available, in the time frame required by the Order will be very expensive, both in terms of the monitoring and investigative work required to comply and in terms of the personnel hours required to perform the work. Petitioner has already spent considerable sums to comply with the bacteria TMDL for Ballona Creek. The failure to comply with the Order, moreover, subjects Petitioner to administrative civil liability, or potentially to judicially imposed civil penalties, of up to \$10,000 per day or \$25,000 per day, respectively. Additional discussion of the harm to Petitioner is set forth in the Statement of Points and Authorities.

5. The Action That Petitioner Request The State Board to Take:

Petitioner request that the State Board issue an order either:

(a) setting aside the Regional Board's Executive Officer's Order and NOV in their entirety; or

(b) directing the Regional Board Executive Officer to withdraw the Order and NOV directed to Petitioner.

6. Statement of Points of Authorities in Support of Legal Issues Raised in the Petition: See attached Exhibit C.

7. Statement that the Petition Has Been Sent to the Regional Board Executive Officer: A copy of this petition was mailed to the Regional Board Executive Officer, Tracy J. Egoscue, on April 3, 2008.

8. Statement Regarding Raising Substantive Issues or Objections Before the Regional Board: The substantive issues and objections raised in this Petition could not have come before the Regional Board because the Order and NOV were issued by the Executive Officer, without prior notice or hearing.

Dated: April 3, 2008

Respectfully submitted,

CITY OF BEVERLY HILLS

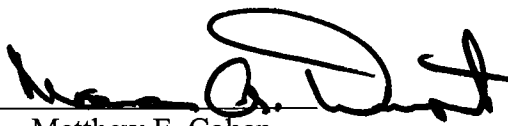
By: 
for Matthew E. Cohen
Attorneys for Petitioner
CITY OF BEVERLY HILLS

EXHIBIT “A”

TO PETITION TO

STATE WATER BOARD BY

CITY OF BEVERLY HILLS



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Roderick J. Wood
City Manager
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID
4B190132002)**

Dear Mr. Wood:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Beverly Hills is a Permittee.

BACKGROUND

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the municipal separate storm sewer system (MS4) that cause or contribute to exceedances of the bacteria RWLs.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay.

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These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

As documented in the enclosed Notice of Violation, technical staff of the Regional Board has concluded that Beverly Hills is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at one shoreline monitoring site located along Santa Monica Bay beaches to which the City of Beverly Hills discharges via the MS4, on 119 days, which included 209 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are detailed in the enclosed Notice of Violation. The City of Beverly Hills is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

REQUIREMENT TO PROVIDE INFORMATION

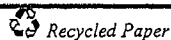
California Water Code § 13383 provides the Regional Board the authority to require a Permittee to monitor and report and provide other information, under penalty of perjury, that the Regional Board requires. **Pursuant to CWC § 13383, the City of Beverly Hills is hereby ordered to submit the information required in this Order by April 21, 2008.** Furthermore, pursuant to CWC § 13385, failure to comply with any requirements established pursuant to CWC § 13383 may result in the imposition of administrative civil liability penalties by the Regional Board of up to \$10,000 for each day in which the violation occurs after the April 21, 2008 due date. (CWC § 13385(a)(3).)

Pursuant to CWC § 13383, the Regional Board directs the City of Beverly Hills to provide information evaluating and documenting (i) the causes of the violations, (ii) remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit and those taken since, and (iii) the City's plans for additional corrective and preventative actions to bring MS4 discharges into compliance with the bacteria RWLs applicable to the Santa Monica Bay for the upcoming summer dry weather period, beginning on April 1, 2008.

Specifically, the City of Beverly Hills is required to submit a report providing the following information for the shoreline monitoring site, for which it is jointly responsible, where violations have been documented. The report shall be signed by an authorized signatory for the City of Beverly Hills, under penalty of perjury. The report shall provide:

1. For site SMB BC-01, which is impacted by discharges from Ballona Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Ballona

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Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Ballona Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations at this site are originating from sources in proximity to the shoreline monitoring location, then the City of Beverly Hills shall provide the information required below.

2. The source(s) of the violations for the shoreline compliance location, including an evaluation of dry weather discharges from the MS4 at the noncompliant shoreline location on the date(s) of the violations. The evaluation shall include, where available:
 - a. Details regarding dry weather discharge from the MS4 to the noncompliant shoreline location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
 - b. Details regarding existing treatment of summer dry weather discharge from the MS4 at the noncompliant shoreline location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
 - c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.
3. A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit (i.e., before September 14, 2006) and those remedial actions taken since, and the results thereof.
4. A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.

In addition, should the City of Beverly Hills contend that it is not responsible for one or more of the violations, Beverly Hills shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline monitoring site is not the result of discharge from the MS4 but from some other sources or discharges;
2. Evidence that Beverly Hills does not discharge dry weather flow into the Santa Monica Bay at the shoreline monitoring site; and
3. Evidence that Beverly Hills' summer dry weather discharges into the Santa Monica Bay are treated to a level that does not exceed either the single sample or geometric mean bacteria RWLs.

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CIVIL LIABILITY

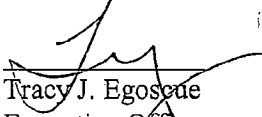
Pursuant to CWC § 13385(a)(3), the City of Beverly Hills is subject to penalties of up to \$10,000 for any violation of the requirements set forth in this Order. These civil liabilities may be assessed by the Regional Board beginning with the date on which a violation of this Order first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Beverly Hills may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above, if compliance does not timely occur.

RIGHT TO PETITION

Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of this Order with the State Water Resources Control Board (SWRCB). The petition must be sent to the SWRCB, P.O. Box 100, Sacramento, CA 95812.

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

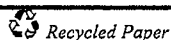
Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosure: Notice of Violation, dated March 4, 2008

cc: Ms. Josette Descalzo, Water Quality Specialist, Beverly Hills
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

EXHIBIT “B”

TO PETITION TO

STATE WATER BOARD BY

CITY OF BEVERLY HILLS



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful
320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Roderick J. Wood
City Manager
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID 4B190132002)

Dear Mr. Wood:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Beverly Hills is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

California Environmental Protection Agency



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The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The City of Beverly Hills is hereby notified that technical staff has concluded that Beverly Hills is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at one shoreline monitoring site located along Santa Monica Bay beaches to which the City of Beverly Hills discharges via the MS4, on 119 days, which included 209 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachment, and incorporated herein by reference. The City of Beverly Hills is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

CIVIL LIABILITY

Pursuant to CWC § 13385, the City of Beverly Hills is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Beverly Hills may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the City of Beverly Hills to submit a variety of reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the City's plans for additional corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay.

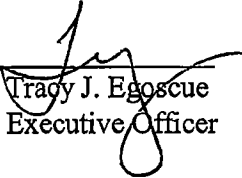
Mr. Roderick J. Wood

- 3 -

March 4, 2008

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachment 40
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Ms. Josette Descalzo, Water Quality Specialist, Beverly Hills
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency

 Recycled Paper

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TABLE 1

**BEVERLY HILLS
SUMMARY OF VIOLATIONS OF BACTERIA
RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042**

Site ID	Single Sample RWL Violations				30-day Geometric Mean RWL Violations			Total RWL Violations by Site	Total Days of Violations by Site
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus		
SMB BC-01	30	15	7	8	113	36	0	209	119

ATTACHMENT

**VIOLATIONS OF BACTERIA RECEIVING WATER LIMITATIONS BY
SHORELINE MONITORING SITE**

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					1452		
9/15/2006					1225		
9/16/2006					1176		
9/17/2006					1186		
9/18/2006					1180		
9/19/2006					1137		
9/20/2006					1020		
4/24/2007	>13000	4400	190	>13000			
6/15/2007				1900			
6/22/2007	11000						
6/28/2007	11000						
6/30/2007			140		1092		
7/1/2007					1096		
7/2/2007					1191		
7/3/2007					1315		
7/4/2007					1259		
7/5/2007					1423		
7/6/2007					1516		
7/7/2007					1587		
7/8/2007					1512		
7/9/2007					1536		
7/10/2007					1505		
7/11/2007					1307		
7/12/2007					1513		
7/13/2007	13000				1755		
7/14/2007					1817		
7/15/2007					1813		
7/16/2007					1814		
7/17/2007	>13000				1992		
7/18/2007	>13000				2170		
7/19/2007	>13000				2675		
7/20/2007					2161		
7/21/2007	>13000				2746		
7/22/2007					2570		
7/23/2007					2531		
7/24/2007					2599		
7/25/2007					2427		
7/26/2007	13000				2612		
7/27/2007	>13000				2910		
7/28/2007					2650		
7/29/2007					2602		
7/30/2007					2563		
7/31/2007					2482		
8/1/2007	13000				2676		

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
8/2/2007	>13000				2713		
8/3/2007	>13000	500			3146		
8/4/2007	>13000				3535		
8/5/2007					3427		
8/6/2007					3255		
8/7/2007	13000				3477		
8/8/2007	13000				3691		
8/9/2007					4001		
8/10/2007	>13000				5084		
8/11/2007					5039		
8/12/2007					4817		
8/13/2007					5553		
8/14/2007	11000	1300		11000	5737		
8/15/2007	>13000	6800		>13000	5955		
8/16/2007	>13000	11000		>13000	5955		
8/17/2007	11000	5500		11000	5909	235	
8/18/2007	>13000	13000		>13000	5909	299	
8/19/2007					7315	321	
8/20/2007					7107	336	
8/21/2007					6983	337	
8/22/2007			590		6837	329	
8/23/2007	>13000	1100			7183	374	
8/24/2007	13000				8273	403	
8/25/2007					7647	391	
8/26/2007					7456	426	
8/27/2007					8106	467	
8/28/2007					7618	426	
8/29/2007					6888	391	
8/30/2007					7316	403	
8/31/2007	>13000	1300			7316	461	
9/1/2007		830			7216	502	
9/2/2007					7017	502	
9/3/2007					6803	524	
9/4/2007		500			6852	523	
9/5/2007					6958	491	
9/6/2007	13000	500			6958	499	
9/7/2007					6041	468	
9/8/2007					5723	454	
9/9/2007					5504	460	
9/10/2007					5894	506	
9/11/2007					5679	460	
9/12/2007	>13000	430			5897	458	
9/13/2007	>13000	1800		>13000	5942	465	
9/14/2007	>13000	830			5942	423	

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/15/2007					5598	335	
9/16/2007					5421	293	
9/17/2007					5189	243	
9/18/2007					5220	241	
9/19/2007					4822	227	
9/20/2007					3967	211	
9/21/2007					3948	211	
9/22/2007					3719		
9/23/2007					3482		
9/24/2007					3563		
9/25/2007					3543		
9/26/2007	13000				3781		
9/27/2007					3722		
9/28/2007			140		3879		
9/29/2007			150		3785		
9/30/2007					3547		
10/1/2007					3356		
10/2/2007					3036		
10/3/2007					2753		
10/4/2007					2594		
10/5/2007					2143		
10/6/2007					1821		
10/7/2007					1934		
10/8/2007					1941		
10/9/2007					1753		
10/10/2007					1577		
10/11/2007					1355		
10/12/2007					1203		
10/13/2007					1054		
10/23/2007			110				
10/25/2007			320				
Total Violations	30	15	7	8	113	36	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

EXHIBIT “C”

TO PETITION TO

STATE WATER BOARD BY

CITY OF BEVERLY HILLS

STATEMENT OF POINTS AND AUTHORITIES

Petitioner submits this Statement of Points and Authorities in support of its Petition for Review filed pursuant to Water Code § 13320(a) and 23 Cal. Code Reg. § 2050.

I. Statement of Facts

Petitioner is a permittee under the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (“MS4 Permit”). The MS4 Permit, originally adopted on December 13, 2001, was amended on September 14, 2006 by Order No. R4-2006-0074 adopted by the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) to implement the summer dry weather bacteria waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (“SMBB TMDL”). The MS4 Permit was further amended on August 9, 2007 by Order No. R4-2007-0042, adopted by the Regional Board to add the summer dry weather bacteria waste load allocations established in the Marina del Rey Harbor Mothers’ Beach and Back Basins Bacteria TMDL (“Marina TMDL”).

In the June 2006, the Regional Water considered and adopted via Resolution 2006-11, a separate TMDL for Bacteria in the Ballona Creek, Ballona Estuary, & Sepulveda Channel (“BC TMDL”). Petitioner’s MS4 system drains into a system that connects to Ballona Creek and ultimately, into the Ballona Estuary. Petitioner’s system is located within what the Board described as the “Reach 1” area of the watershed. The BCB TMDL contains significantly different implementation schedules, requires a separate monitoring compliance system, and also allows for demonstration of the contribution of natural sources to the overall bacteria levels, particularly those in the SMBB and Marina TMDLs.

On March 4, 2008, the Executive Officer of the Regional Board issued Notices of Violation (“NOVs”) and Order to 20 cities that are permittees under the MS4 Permit, including the City of Beverly Hills, alleging violations of Parts 2.5 and 2.6 the MS4 Permit’s receiving water limitations (“RWLs”). Specifically, the NOV alleged exceedances of bacteria water quality objectives during summer dry weather at shoreline and harbor locations adopted for monitoring water quality in Santa Monica Bay and Marina Del Rey harbor. The alleged exceedances were of two types, single sample violations and 30-day geometric mean violations. The NOV alleged that these exceedances constituted a violation of Water Code § 13376 and rendered the recipient liable under Water Code § 13385. The NOV threatened recipient with administratively imposed civil penalties of up to \$10,000 per day of violation or with judicially imposed civil penalties of up to \$25,000 per day of violation.

The monitoring locations at which the alleged exceedances occurred are locations approved by the Executive Officer for the purpose of measuring compliance with the SMBB and Marina TMDLs. There is no current monitoring compliance program for the BC TMDL, and thus, the monitoring locations do not formally apply to the Ballona Creek watershed. On or about April 7, 2004, the Executive Officer approved a separate monitoring program for the SMBB TMDLs entitled “Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan.” On or about April 13, 2007, the Executive Officer approved a separate monitoring program for the Marina TMDL entitled “Marina del Rey Harbor Mothers’ Beach and Back Basins Bacterial TMDL Coordinated Shoreline Monitoring Plan.” To date, the Executive Officer has not approved a separate monitoring program for the BC TMDL.

The SMBB TMDL and Marina TMDL Coordinated Monitoring locations were adopted pursuant to their own criteria. For example, the SMBB TMDL monitoring locations are “those shoreline locations currently monitored by the City of Los Angeles [EMD], County Sanitation Districts of Los Angeles [LACSD], and the Los Angeles

County Department of Health Services [LACDHS] at the time of adoption of this TMDL by the Regional Board” and “For those subwatersheds without an existing shoreline monitoring site, responsible jurisdictions and agencies must establish a shoreline monitoring site if there is measurable flow from a creek or publicly owned storm drain to the beach during dry weather.” (SMBB Monitoring Plan, pp. 5 and 6.)

The NOV and Order issued to Petitioner cited alleged exceedances at only one of the SMBB and Marina monitoring locations. This selected monitoring location, SMB-BC-01, is located at the mouth of Ballona Creek, which has its own bacteria TMDL whose compliance dates have not yet occurred. Thus, discharges from Ballona Creek MS-4 which allegedly impact location SMB-BC-01 cannot be a basis for an alleged violation. Moreover, the Ballona Estuary is the subject to natural sources of bacteria contributed from the Del Rey Lagoon and Ballona Wetlands.

Prior to issuing the NOV and Order, the Executive Officer did not follow the protocol set forth in the MS4 Permit for issuing such an NOV and Order. When the Regional Board amended the MS4 Permit to add the SMBB TMDL, the Regional Board adopted a special finding, No. E.37, setting forth the procedure the Regional Board would follow if an exceedance at a monitoring location occurred. Finding E. 37 provides as follows:

“If the Receiving Water Limitations are exceeded at a compliance monitoring site, the Regional Board will generally issue an appropriate investigative order pursuant to Cal. Water Code § 13267 or § 13225 to the Permittees and other responsible agencies or jurisdictions within the relevant subwatersheds to determine the source of the exceedance. Following these actions, Regional Board staff will generally evaluate the need for further enforcement as follows:

- (a) If the Regional Board determines that the exceedance did not result from discharges from the MS4, then the MS4 Permittees would not be responsible for violations of these provisions.
- (b) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that their MS4 does not discharge dry weather flow into Santa Monica Bay or Basins D, E, or F in Marina del Rey Harbor, those Permittees would not be responsible for violations of these provisions even if the Receiving Water Limitations are exceeded at an associated compliance monitoring site.

- (c) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that their MS4 summer dry weather discharge into Santa Monica Bay or Basins D, E, or F in Marina del Rey Harbor is treated to a level that does not exceed either the single sample or the geometric mean bacteria objectives, those Permittees shall not be responsible for violations of these provisions even if the Receiving Water Limitations are exceeded at an associated compliance monitoring site.
- (d) If the Regional Board determines that one or more Permittees have caused or contributed to violations of these Receiving Water Limitations, the Regional Board will consider appropriate enforcement action, including a cease and desist order with or without a time schedule for compliance, or other appropriate enforcement action depending upon the circumstances and the extent to which the Permittee(s) has endeavored to comply with these provisions.”

The Regional Board had relied on the adoption of this finding in amending the MS4 Permit. Before the vote, then Regional Board Chairman David Nahai asked then Executive Officer Jonathan Bishop the following question and received the following answer:

CHAIRPERSON NAHAI: . . . Now, in the materials that you’ve provided to us – Jon, this is a question for you – have you not included certain enforcement, I’ll call them protocols, steps that would be taken with respect to a possible violation?

EXECUTIVE OFFICER BISHOP: I’ve included the procedures that I planned to go through as part of the findings in your documentation.

CHAIRPERSON NAHAI: Okay. And should it be shown that additional time for compliance is necessary, have you not provided for the possibility of time schedule Order or other such devices in order to provide time for compliance should that be necessary?

EXECUTIVE OFFICER BISHOP: That is correct.

Transcript of Meeting of Regional Board, September 14, 2006, page 361, line 14 to page 362, line 2. This procedure applies equally to the MS4 Permit amendment relating to the Marina TMDL, the amendment having been adopted with Finding E.37 already in the Permit.

Nevertheless, the Executive Officer did not follow the protocols set forth in Finding E.37 before issuing the NOV or the Order to this Petitioner. The Executive

Officer did not issue an order pursuant to Water Code § 13267 or Water Code § 13225 requesting Petitioner to investigate the cause of the alleged RWL exceedances, nor did the Executive Officer provide Petitioner with an opportunity, prior to issuance of the NOV, to indicate that the alleged exceedances were not the result of discharges from the MS4 or were otherwise not the legal responsibility of Petitioner. The Executive Officer did not, instead of issuing NOVs, issue a cease and desist order to Petitioner with or without a time schedule order.

Instead, the Executive Officer issued NOV and Order pursuant to California Water Code Section 13383. The Order demanded, that the recipient provide, by April 21, 2008, certain detailed information set forth in the text of the Order including (a) identification of the sources of the alleged violations for each shoreline and harbor location; (b) a detailed description of remedial actions taken both before and after incorporation of the SMBB and Marina TMDLs into the MS4 Permit; and (c) a detailed description of “additional corrective and preventative actions” to be taken “to preclude future violations” plus a time schedule “designed to achieve full compliance;” Order, p. 3.

The Order also demanded that certain recipients, including the City of Beverly Hills, analyze data from areas within the Ballona Creek watershed (which is not part of the MS4 subject to a MS4 Permit bacteria limit) to determine whether those water bodies were causing the violation or whether the violations “are originating from sources in proximity to the shoreline monitoring location.” If the latter was the case, recipients were required to provide the analysis required above. Order, p. 3-4.

In addition, the Order contained a dramatic reversal of the burden of proof, essentially requiring the Petitioner to demonstrate that it was not at fault for the alleged exceedances, which occurred miles downstream from the City’s MS4 system. The Order demanded that if a recipient contended that “it is not responsible for one or more of the violations,” it must submit evidence that the cause of the RWL was from “some other

sources or discharges,” and that it was not discharging dry weather flow at the monitoring site or that it was treating discharges to a level that did not exceed the RWLs. Order, p.

4. The Order’s detailed requirements to submit information can be found in Section B.2 of the Petition for Review.

The Order further stated that any violation of the requirements set forth in the Order would subject recipients to civil penalties of up to \$10,000 or for judicially imposed civil penalties of up to \$25,000 per day, as well as “penalties pursuant to other sections, and other forms of enforcement proceedings . . . if compliance does not timely occur.” Order, p. 4.

II. Points and Authorities

A. The Petition is Properly Before the State Board

Water Code § 13320 provides that an aggrieved person may challenge the act of a regional board under, *inter alia*, Chapter 5.5 of the Water Code within 30 days of such action. The Order was issued pursuant to that chapter, under authority of Water Code § 13383 and thus are appropriate for challenge under Section 13320. Moreover, the Order itself provides that it may be challenged under Section 13320. As set forth in Section 5, Petitioner is an aggrieved person with respect to the Order. The Petition is properly before the State Board.

B. In Issuing the Order and the NOV, the Executive Officer Did Not Follow the Procedures Set Forth in the MS4 Permit

As noted in the Statement of Facts above, in amending the MS4 Permit to add the SMBB TMDL and the Marina TMDL, the Regional Board relied upon special finding No. E.37, setting forth the procedure the Regional Board would follow if an exceedance at a monitoring location occurred.

As also noted in the Statement of Facts, the Executive Officer did not follow that procedure. No Order pursuant to Water Code § 13267 or § 13225 was issued to Petitioner. The Regional Board Executive Officer made no attempt to determine, prior to

issuing the NOV or Order, whether any permittee was, in fact, responsible for the alleged exceedances of the bacteria RWLs. The Executive Officer did not issue a cease and desist order with or without a time schedule for compliance. Thus, the Executive Officer ignored Finding No. E37 and issued the NOVs and the Order for exceedances that may, in fact, have no connection with discharges from the MS4. It is an abuse of discretion for an agency not to follow its own procedures. *See Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal. App. 3d 604, 630-631 (failure to comply with agency's own regulations required timber harvesting plan to be set aside).

C. The Order Seeks Information Regarding Alleged Violations of Receiving Water Limitations That Were Improperly Established

On September 14, 2006, over the objection of the County and the District, the Regional Board amended the MS4 Permit, adding Part 2.5 to incorporate the numeric limits of the SMBB TMDL. As set forth in the petition, the amendment of the MS4 Permit was unlawful because:

(1) the amendment creates an inconsistency with two other TMDLs adopted by the Regional Board: the Malibu Creek Bacteria TMDL (Regional Board Resolution No. 2004-019R) and the Ballona Creek Bacteria TMDL (Regional Board Resolution No. 2006-011);

(2) the amendment requires Petitioner and other permittees to strictly comply with the numeric limits set forth in the SMBB TMDL, contrary to the recommendations of the Expert Panel convened by the State Board, without regard to the MS4 Permit's iterative process applicable to all other water quality objectives, and without considering whether and how the Petitioner and other permittees can comply;

(3) the amendment unlawfully purports to make Petitioner responsible for discharges other than their own by making Petitioner jointly responsible for discharges of other permittees, even though Petitioner have no authority or control over these discharges; and